

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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PHILLIP CLAYTON,

Plaintiff,

v.

1:10-CV-1079  
(TJM/DRH)

COMMUNITY LAND TRUST; BEVERLY BURNETT;  
ROGER LEWIS; and CONNIE CHAVEZ,

Defendants.

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APPEARANCES:

PHILLIP CLAYTON  
Plaintiff pro se  
842 Maplewood Avenue  
Schenectady, New York 12303

DAVID R. HOMER  
U.S. Magistrate Judge

**REPORT-RECOMMENDATION and ORDER**

In compliance with this Court's order (Dkt. No. 5), pro se plaintiff Phillip Clayton ("Clayton" or "plaintiff") filed an amended complaint. Dkt. No. 6. Clayton brings this action pursuant to 42 U.S.C. § 1983. A review of Clayton's amended complaint reveals that Clayton has failed to bring forth any new or additional facts or claims demonstrating that the defendants acted under color of state law or acted in concert with a state actor to violate Clayton's constitutional rights. Clayton's allegations against the named defendants are based on a leaseholder dispute whereby Clayton claims he is the proper leaseholder of the apartment in which he lives. Dkt. No. 1 at 2-3. Such claim does establish a cause of action of 42 U.S.C. § 1983. See Dkt. 5 at 4-5.

Accordingly, it is hereby

**RECOMMENDED** that Clayton's complaint be dismissed in its entirety without prejudice pursuant to Fed. R. Civ. P. 16(f)(1)(C) and 37(b)(2)(A)(v) for failure to comply with the Court's September 20, 2010 order; and it is hereby


**ORDERED** that the Clerk serve Clayton with a copy of this report-recommendation by regular mail and certified mail, return receipt requested.

Pursuant to 28 U.S.C. § 636(b)(1), the parties may lodge written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court "within fourteen (14) days after being served with a copy of the . . . recommendation." N.Y.N.D.L.R. 72.1(c) (citing 28 U.S.C. §636(b)(1)(B)-(C)). **FAILURE TO OBJECT TO THIS REPORT WITHIN FOURTEEN DAYS WILL PRECLUDE APPELLATE REVIEW.** Roldan v. Racette, 984 F.2d 85, 89 (2d Cir. 1993); Small v. Sec'y of HHS, 892 F.2d 15 (2d Cir. 1989); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e).

**ORDERED**, that the Clerk serve a copy of this Order on Clayton by regular mail and certified mail.

Dated: November 30, 2010

Albany, New York

  
United States Magistrate Judge